



-6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2015-0034; FRL-9980-09-Region 5]

**Approval and Promulgation of Air Quality Implementation Plans;
Minnesota; Regional Haze Progress Report**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Minnesota's regional haze progress report under the Clean Air Act (CAA) as a revision to the Minnesota State Implementation Plan (SIP). Minnesota has satisfied the progress report requirements of the Regional Haze Rule. Minnesota also provided a determination of the adequacy of its plan in addressing regional haze with its negative declaration, submitted with the progress report, that no revisions are needed to its plan.

DATES: This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2015-0034. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886-6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. What are EPA's Responses to the Comments?
- III. What Action is EPA Taking?

IV. Statutory and Executive Order Reviews.

I. Background

States are required to submit a progress report every five years that evaluates progress towards the reasonable progress goals (RPGs) for each mandatory Class I Federal area¹ (Class I area) within the state and in each Class I area outside the state which may be affected by emissions from within the state. 40 CFR 51.308(g). States are also required to submit, at the same time as the progress report, a determination of the adequacy of the state's existing regional haze SIP. 40 CFR 51.308(h). The first progress report SIP is due five years after submittal of the initial regional haze SIP.

Minnesota submitted its regional haze plan to EPA on December 30, 2009, with a supplement submitted on May 8, 2012. Correspondingly, Minnesota submitted its five-year progress report and its determination of adequacy on December 30, 2014. Minnesota made no substantive revisions to its regional haze plan as it determined that the existing SIP is sufficient to achieve the 2018 reasonable progress goals for the Class I areas

¹ Under the CAA, a Class I Federal area is one in which visibility is protected more stringently than under the national ambient air quality standards. Class I Federal areas include national parks, wilderness areas, monuments, and other areas of special national and cultural significance.

impacted by Minnesota emissions and thus further revision to the SIP was unnecessary. EPA is approving Minnesota's progress report on the basis that it satisfies the applicable requirements of 40 CFR 51.308.

In order to satisfy the requirements for Best Available Retrofit Technology (BART) for certain taconite ore processing facilities in Minnesota, EPA promulgated a Federal Implementation Plan (FIP) for taconite on February 6, 2013, (78 FR 8706) and revised the taconite FIP on April 12, 2016, (81 FR 21672). Minnesota elected to use the Cross-State Air Pollution Rule (CSAPR) to satisfy BART for its electric generating units.

Two Class I areas are located in Minnesota, the Boundary Waters Canoe Wilderness Area (Boundary Waters) and the Voyageurs National Park (Voyageurs). Further, Minnesota emissions contribute to visibility impairment at a Class I area located out of state, the Isle Royale National Park (Isle Royale) in Michigan.

A direct final rule (DFR) approving the Minnesota regional haze progress report published on October 18, 2017 (82 FR 48425), along with a proposed rule (82 FR 48472) that provided a 30-day public comment period. The DFR evaluated the Minnesota submission by assessing its progress in implementing its

regional haze plan during the first half of the first implementation period as well as the statutory and regulatory background for EPA's review of Minnesota's regional haze plan. The DFR also provided a description of the regional haze requirements addressed in the Minnesota progress report. The DFR serves as the detailed basis for this final rule.

II. What are EPA's Responses to the Comments?

Comments were received on the DFR (82 FR 48425). The two anonymous commenters both expressed concern over CSAPR issues. The comments pertain to issues that were addressed in earlier Federal rulemakings.

Comments: One commenter claims that Minnesota's submission cannot be approved because CSAPR is a FIP and Minnesota cannot rely on a FIP to demonstrate that its SIP is adequate. The commenter also claims that CSAPR has been rescinded as a program and is no longer in force. The commenter states that, as a result, Minnesota cannot rely on CSAPR for its long term goals.

The other commenter contends that EPA cannot approve progress reports that rely on CSAPR or any other regional trading program to satisfy the BART requirements because BART is required on a source-by-source basis. The commenter claims that BART needs to be evaluated based on the impacts on each national

park from each source, not as a holistic multi-source or multi-park evaluation.

Response: The regulations governing progress reports do not include a requirement for states (or EPA) to ensure that all applicable regional haze requirements for the planning period have been met by the existing plan. As such, the comment raising concerns about the reliance on CSAPR to satisfy the BART requirement raises issues outside the scope of this rulemaking. We do note, however, that 40 CFR 51.308(e)(4) allows a state to rely on participation in a CSAPR FIP to address the BART requirements for electric generating units (EGUs). Consistent with this rule, EPA approved Minnesota's regional haze plan in 2012 as satisfying the applicable BART requirements in 40 CFR 51.308 for the subject EGUs through participation in CSAPR (77 FR 34801 (June 12, 2012)).

EPA's approval of Minnesota's reliance on CSAPR to satisfy the BART requirements for these sources rather than requiring source by source BART was upheld by the 8th Circuit. *National Parks Conservation Ass'n v. McCarthy*, 816 F.3d.989, 994 (8th Cir. 2016). More broadly, EPA's regulations that allow for the comparison of average visibility improvements across multiple Class I areas in assessing regional trading programs as

alternatives to BART has also been upheld as reasonable by the D.C. Circuit. *Utility Air Regulatory Group v. EPA*, 471 F.3d 1333, 1340-41 (D.C. Cir. 2006) (upholding CAIR as a BART alternative); *Utility Air Regulatory Group v. EPA*, 885 F.3d 714, 721 (D.C. Cir. 2018) (upholding CSAPR as a BART alternative). We also note that CSAPR has not been rescinded and remains in force. Finally, the regional haze rule defines "implementation plan" to include approved SIPs or FIPs. Given this, states may rely on FIPs in their progress reports to demonstrate the adequacy of a plan to achieve reasonable progress goals.

In summary, EPA disagrees that the points raised by the commenters prevent approval of the progress report. Thus, EPA finds that Minnesota's progress report satisfies 40 CFR 51.308.

III. What Action is EPA Taking?

EPA is approving the regional haze progress report that Minnesota submitted on December 30, 2014, under the CAA as a revision to the Minnesota SIP. EPA finds that Minnesota has satisfied the progress report requirements of the Regional Haze Rule. EPA also finds that Minnesota has met the requirements for a determination of the adequacy of its regional haze plan with its negative declaration submitted with the progress report.

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court

of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 18, 2018.

Cathy Stepp,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.1220, the table in paragraph (e) is amended by adding an entry for “Regional Haze Progress Report” to follow the entry titled “Regional Haze Plan” to read as follows:

§ 52.1220 Identification of plan.

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(e) * * *

EPA--Approved Minnesota Nonregulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Comments
* * * * *				
Regional Haze Progress Report	statewide	12/30/2014	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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[FR Doc. 2018-13825 Filed: 6/27/2018 8:45 am; Publication Date: 6/28/2018]